

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Donald and Tracy Caputo,

Debtors.

Case No. 04-63197
Chapter 13
Hon. Marci B. McIvor

**OPINION SUSTAINING IN PART TRUSTEE'S OBJECTIONS TO PAUL GIGLIOTTI'S
FIRST APPLICATION FOR COMPENSATION FOR SERVICES RENDERED PRE-
AND POST CONFIRMATION**

This matter is before the Court on the Trustee's Objections to Paul Gigliotti's First Application for Compensation for Services Rendered Pre- and Post Confirmation. The Trustee objects to the fees sought as excessive and unreasonable and/or duplicative. For the reasons stated in this Opinion, the Court sustains in part the Trustee's Objections and awards Counsel total fees and costs of \$ 5,423.10.

Jurisdiction

This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

Statement of Facts

Debtors filed a voluntary Chapter 13 bankruptcy petition on August 17, 2004. Paul Gigliotti became Debtors' Counsel on September 10, 2004 (by stipulated Order to Substitute Attorney) after the petition and original schedules were filed. An Order Confirming Plan was entered on December 2, 2004. The Plan provides a 4% dividend to unsecured creditors. A worksheet filed with the petition estimated total attorney fees of \$4,500. On February 23, 2005, Counsel filed an application seeking fees in the amount of

\$8,044.50 and costs of \$190.16. On March 7, 2005, the Trustee filed objections to the fee application. The Trustee asserts that the fees sought are excessive, unreasonable and/or unnecessary under 11 U.S.C. § 330.¹

Standard for Fee Awards in Bankruptcy

A court has the duty to review all fee applications, regardless of whether an objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. § 330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991).

A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat'l Bank v. Auto Specialities Mfg. Co. (In re Auto Specialities Mfg. Co.)*, 18 F.3d 358 (6th Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. § 330(a)(1). Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

¹Mr. Gigliotti is the second attorney to represent Debtors in this case. The fees he seeks in this motion are in addition to \$2,614.66 fees and costs sought by Debtors' first attorney.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate, or;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer*

Repair, Inc., 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a “lodestar method” for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991).

The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may “then determine whether a global reduction or enhancement of the fees is in order.” *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993).

The ability to review fee applications in the context of each individual case “permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration.” *Allied Computer Repair, Inc.*, 202 B.R. at 884-85.

Courts have used many factors to analyze the number of hours which constitute a “reasonable number of hours.” The factors most often included by courts in their analysis are: 1) the nature of the services rendered; 2) the difficulties and complexities encountered; 3) the results achieved; 4) the size of the estate and the burden it can safely bear; 5) the duplication of services; 6) professional standing, ability, and experience of the applicant; 7) fairness to each applicant; and 8) the cost of comparable services other than for a bankruptcy case. *In re General Oil Distributors, Inc.*, 51 B. R. 794 (E.D. N.Y. 1985). The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Bankruptcy attorneys are not entitled to compensation merely because time recorded was actually expended. *In re Allied Computer Repair, Inc.*, 202 B.R. 877, 886 (Bankr. W.D. Ky. 1996). The purpose of bankruptcy is not to serve as a fund for payment of professional fees. Instead, the purpose is to maximize the estate for distribution to creditors. “Attorneys must be disabused of the erroneous notion that they are entitled to compensation as long as the time recorded was actually expended.” *Allied Computer Repair* 202 B.R. at 886. Every dollar spent on legal fees results in a dollar less that is available to creditors. *Id.* Attorneys should use “billing judgment” and make a good faith effort to “eliminate unproductive time or to reduce hours on productive projects where the total amount billed would be unreasonable in relation to the economic value of the matter in question.” *In re Atwell*, 148 B.R. 483, 490-492 (W.D. Ky. 1993)(billing judgment applicable in determining both the hourly rate and number of billable hours).

In the Context of This Chapter 13 Case, the Fees Requested By Debtors’ Attorney are Unreasonable

In the present case, Debtors’ Attorney requests fees of \$ 8,044.50 and costs of \$190.16 for a total of \$8,234.66. A review of the file indicates that this is a typical Chapter 13 case, without any unusual issues or complex litigation. Given the nature of the case, the fees requested are not warranted.²

The nature of the work summarized in Counsel’s fee application (¶ 3) is mostly routine Chapter 13 practice. Some time was spent addressing a state court matter on Debtors’ behalf, although those services did not benefit the estate. Quite a few hours were

²The standard fee for a Chapter 13 case in this district is \$1,800.00.

spent addressing tax issues, specifically refunds owed to Debtors by the IRS. While Counsel was successful in securing sizable refunds (and thereby increasing funding for the plan), the proceeds payable into the plan (\$7,325.00) do not even cover the amount of attorney fees sought in fee applications filed to date.

Having reviewed the present application in detail, the Court agrees with the Trustee that several of the time entries appear excessive. Specifically:

- (1) The time entry dated September 27, 2004, related to attending the § 341 meeting of creditors is reduced from 2.4 hours to 1.5 hours, resulting in a \$171.00 reduction in fees;
- (2) Ten time entries between November 1 and November 8, 2004 (10.7 hours at \$190 per hour) related to client meetings and revision of documents are reduced by half pursuant to 11 U.S.C. 330(a)(3)(D), resulting in a reduction of \$1,016.50;
- (3) Fifteen time entries between December 20, 2004 through January 13, 2005 (3.1 hours totaling \$585.00) related to a state court action are reduced by half, resulting in a reduction of \$ 292.50;
- (4) Twenty-two time entries between November 23, 2004 and February 18, 2005 (8.8 hours totaling \$1,795.50) related to resolving tax issues are reduced by half, resulting in a reduction of \$897.75;
- (5) Six time entries between February 1, 2005 and February 7, 2005 (1.3 hours totaling \$302.00) related to the purchase of a new vehicle are reduced by half, resulting in a reduction of \$151.00.

These adjustment result in a total fee reduction of \$2,528.75.

While the issue is not raised by the Trustee's Objections, the Court notes that the time entry dated February 19, 2005 seeks \$532.00 for the preparation of Counsel's fee application (2.8 hours at \$190 per hour). "Absent exceptional circumstances, fees for the preparation of fee applications should be limited to 5% of the total fees requested." *In re Bass*, 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998).

Applying *Bass* to the present fee application, Debtors' counsel is entitled to no

more than \$ 249.19 in fees related to preparing the fee application (5% of \$ 4,983.75)³.

That amount will be added to Counsel's fee award, for a total award of \$5,232.94.

Conclusion

For the reasons stated above, the Court sustains in part the Trustee's Objections to Paul Gigliotti's First Application for Compensation for Services Rendered Pre and Post Confirmation. Counsel is awarded fees in the amount of \$5,232.94 and costs in the amount of \$190.16 for a total of \$5,423.10.

/s/

Marci B. McIvor
United States Bankruptcy Judge

Dated: May 20, 2005
Detroit, Michigan

cc: Paul Gigliotti
David Ruskin

³Fees requested of \$8,044.50 less the \$532.00 entry for preparing fee application equals \$7,512.50 less reductions itemized by the Court of \$2,528.75 equals \$4,983.75.